FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 31 1949
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1949

No. 360

RICE GROWERS ASSOCIATION OF CALIFORNIA (a corporation),
Petitioner,

vs.

REDERIAKTIEBOLAGET FRODE (a corporation), owner of the Steamship "Frej",
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

CLARENCE G. MORSE,
310 Sansome Street, San Francisco 4, California,
Proctor for Respondent.

FRANCIS L. TETREAULT,
310 Sansome Street, San Francisco 4, California,
Of Counsel.

Subject Index

Page

POINT I—The decision in this case is not in conflict with local decisions inasmuch as it is governed by admiralty law and no question of local law is involved 1

POINT II—The decision in this case is not in conflict with the decisions of this Honorable Court or those of any Court of Appeals on the same subject 2

POINT III—The record clearly establishes that the Court of Appeals did not depart from the accepted and usual course of judicial proceedings 2

POINT IV—The decision of the Court of Appeals is fully and clearly supported by the statutes of the United States and by the rules and previous decisions of this Honorable Court and therefore no reason for granting the petition exists.... 2

Argument 2

A. The vessel and its freight are to be valued as of the end of the voyage 3

B. The voyage ended on June 19, 1947 3

C. Petitioner's arguments based on the law of contracts are irrelevant and those based on the subsequent activities of the vessel are contrary to its stipulation 3

(1) The voyage ended on June 19, 1947 by abandonment, whether or not the abandonment was a breach of contract as to sound cargo 4

(2) Petitioner's argument for valuation at Havana violates its own stipulation 5

D. Although not relevant to this case, respondent's abandonment of the voyage on June 19, 1947 was justified under the law of contracts 6

E. Petitioner's arguments for valuation as of August 4, 1947, are in direct conflict with the prior decisions of this Honorable Court 8

Conclusion 9

Table of Authorities Cited

Cases

	Pages
Assicurazoni Generali v. SS Bessie Morris Co., 1 Q. B. 571	6, 7
Carlisle Packing Co. v. Sandanger, 259 U.S. 255	1
Macbeth & Co. v. Maritime Insurance Co., A. C. 144, XI Aspinall's Maritime Cases (N.S.) p. 52	7
Place v. Norwich and N. Y. Transportation Co., 118 U.S. 468, 30 L. ed. 134	3, 8
The Great Western, 118 U.S. 520, 30 L. ed. 156	3
The Maggie Hammond, 9 Wall. 435, 19 L. ed. 772	6, 7
Union Fish Co. v. Erickson, 248 U.S. 308	1

Texts

Arnould on Marine Insurance, 6th ed., sec. 1117, p. 1432...	7

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1949

No. 360

RICE GROWERS ASSOCIATION OF CALIFORNIA (a corporation), *Petitioner,*

vs.

REDERIAKTIEBOLAGET FRODE (a corporation), owner of the Steamship "Frej", *Respondent.*

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

POINT I.

The decision in this case is not in conflict with local decisions inasmuch as it is governed by admiralty law and no question of local law is involved.

Union Fish Co. v. Erickson, 248 U.S. 308;

Carlisle Packing Co. v. Sandanger, 259 U.S. 255.

POINT II.

The decision in this case is not in conflict with the decisions of this Honorable Court or those of any Court of Appeals on the same subject.

POINT III.

The record clearly establishes that the Court of Appeals did not depart from the accepted and usual course of judicial proceedings.

POINT IV.

The decision of the Court of Appeals is fully and clearly supported by the statutes of the United States and by the rules and previous decisions of this Honorable Court and therefore no reason for granting the petition exists.

ARGUMENT.

The only question presented by the petition is whether the Court of Appeals was correct in holding that for limitation of liability purposes the voyage of the SS FREJ ended in San Francisco on June 19, 1947. (Petition, p. 7.)

A. THE VESSEL AND ITS FREIGHT ARE TO BE VALUED AS OF THE END OF THE VOYAGE.

It is urged by the petitioner and fully supported by the decisions of this Honorable Court that the vessel and its pending freight is to be valued at the end of the voyage for limitation of liability purposes. We agree with that statement.

Place v. Norwich & N. Y. Transportation Co., 118 U.S. 468, 30 L. Ed. 134;

The Great Western, 118 U.S. 520, 30 L. Ed. 156.

It is also urged by the petitioner that the limitation of liability statute "does not concern itself with how" the voyage was "ended". (cf. Petitioner's Brief, p. 32.) We agree with that statement.

B. THE VOYAGE ENDED ON JUNE 19, 1947.

On June 19, 1947 respondent formally abandoned the voyage of the SS FREJ. Respondent at no time rescinded the abandonment or in any way reinstated the voyage which it formally terminated on June 19, 1947.

C. PETITIONER'S ARGUMENTS BASED ON THE LAW OF CONTRACTS ARE IRRELEVANT AND THOSE BASED ON THE SUBSEQUENT ACTIVITIES OF THE VESSEL ARE CONTRARY TO ITS STIPULATION.

The only arguments which petitioner advances to support its contention that the June 19, 1947 abandonment of the voyage should be disregarded as ending the voyage are, first, the argument that such abandon-

ment constituted a breach of contract between the vessel and that portion of its cargo which remained fit to continue the voyage, and, second, reference to the fact that the vessel subsequently, pursuant to a separate agreement, proceeded to Havana with the sound portion of the original cargo on board.

(1) The voyage ended on June 19, 1947 by abandonment, whether or not the abandonment was a breach of contract as to sound cargo.

Petitioner's first argument has no merit. Regardless of whether the abandonment of the voyage on June 19, 1947 constituted a breach of contract as to the sound cargo (respondent believes the abandonment was proper under the law of contracts even as to the sound cargo, and the Court of Appeals found it unnecessary to pass on the point, Rec. p. 108), there was and could be no breach of contract arising from the voyage abandonment as to the damaged cargo which at petitioner's request was discharged and disposed of at San Francisco as being unfit for on-carriage. Petitioner's entire claim, the subject of the litigation in the District Court, concerns only the damaged cargo which was disposed of at San Francisco and as to which the voyage was clearly ended at San Francisco.

The extensive arguments (Petitioner's Brief, pp. 20-35) advanced by petitioner questioning the contractual propriety of the abandonment of the voyage by respondent are not in any way relevant to any question in the case. Whether the abandonment was proper or improper, whether in abandoning the voyage the respondent did or did not incur contractual liabilities to

the *sound cargo* to the crew or others, the fact remains that as to the *damaged cargo* the voyage by the abandonment was ended and the value of the vessel and its pending freight is to be taken at *the end of the voyage* on June 19, 1947.

(2) Petitioner's argument for valuation at Havana violates its own stipulation.

Petitioner's second argument, based on the fact that the vessel later in fact proceeded to Havana, is an argument which it is not proper for petitioner to advance and which is contrary to petitioner's own stipulation. After the abandonment of the voyage and under an entirely new arrangement on July 26, 1947 and before the repairs to the vessel were completed, the parties entered into a memorandum agreement for the carriage of the sound cargo to Havana (Rec., p. 51) which contained among other provisions the stipulation:

> "6. The carrying on of the cargo * * * shall not affect the present status quo of the purported abandonment of the voyage at San Francisco, Calif."

The impropriety of petitioner's basing its argument, contrary to its stipulation, on the fact that the vessel proceeded to Havana is well discussed in Judge Pope's concurring opinion in the Court of Appeals. (Rec., pp. 109-110.)

D. ALTHOUGH NOT RELEVANT TO THIS CASE, RESPONDENT'S ABANDONMENT OF THE VOYAGE ON JUNE 19, 1947 WAS JUSTIFIED UNDER THE LAW OF CONTRACTS.

Although completely irrelevant to any question properly presented in this case, the extensive arguments advanced by petitioner respecting the propriety of the abandonment of the voyage constrain respondent to show that the abandonment was proper, even under the law of contracts, and that the cases cited by petitioner do not support petitioner's position.

On June 19, 1947 when respondent abandoned the voyage, respondent found as a result of the fire occurring on May 6-7, 1947 that the SS FREJ was faced with claims aggregating $415,990 ($50,000 by salvage claimants and $365,990 by your present petitioner) plus damage to the vessel which would cost $167,498.99 to repair, or a minimum threatened expense for the venture, if continued, of $583,488.99 as compared with the value of the wreck and stores on May 8, 1947 of $114,329 and on June 19, 1947, of $120,000. The repairs required by reason of fire damage ($167,498.99) were 158% of the value of the wreck ($106,000). In such circumstances the abandonment of the voyage by respondent was clearly reasonable and justified even under the law of contracts.

The cases cited by petitioner respecting the duty of a vessel to repair and continue its voyage (*Assicurazioni Generali v. S. S. Bessie Morris Co.* (1892), 1 Q. B. 571 and *The Maggie Hammond,* 9 Wall. 435, 19 L. Ed. 772) have no relevance to the instant case since both cases concern the contractual relations

between the vessel and cargo to be on-carried, not, as in this case, the amount of the limitation of liability fund to be established in connection with claims asserted by reason of damages to cargo which was discharged and disposed of by agreement at the port of refuge. In addition, the case of *The Maggie Hammond* does not concern a catastrophe in any way comparable to that suffered by the SS FREJ. The total value of *The Maggie Hammond* does not appear from the reports but it does appear that the total out-of-pocket cost for effecting the necessary repairs was 55/17 (as compared to $167,498.99 for the SS FREJ). In so far as *Assicurazioni Generali,* cited by petitioner, appears to support petitioner's proposition that the shipowner may not abandon the voyage when the vessel suffers damage exceeding the value of the wreck, the case must be deemed overruled by the House of Lords in *Macbeth & Co. v. Maritime Insurance Co.* (1900) A.C. 144, XI Aspinall's Maritime Cases (N.S.) p. 52. Under the rule announced in the *Macbeth* case, i.e., that a vessel may be deemed a constructive total loss where the value of the wreck plus the cost of repairing it would exceed the value of the vessel when repaired, the SS FREJ (the value of the wreck and its repairs exceeding its repaired value by $15,848) would be deemed a constructive total loss, i.e., the vessel suffered such damage that an owner with reasonable prudence and discretion would be convinced that the vessel could not be repaired without hazard of disproportionate expense. *Arnould on Marine Insurance,* 6th ed., sec. 1117, p. 1432.

E. PETITIONER'S ARGUMENTS FOR VALUATION AS OF AUGUST 4, 1947 ARE IN DIRECT CONFLICT WITH THE PRIOR DECISIONS OF THIS HONORABLE COURT.

In contending that the vessel and its pending freight should be valued as of August 4, 1947, petitioner is contending for valuation as of a date other than the end of the voyage. This is contrary to the previous decisions of this Honorable Court on the same subject. In *Place v. Norwich and N. Y. Transportation Co.*, 118 U.S. 468, 30 L. Ed. 134, this Honorable Court had before it a similar situation in which the cargo was attempting to obtain in fixing the amount of the limitation of liability fund the benefit of increased value due to repairs which the owner had effected after the catastrophe and the termination of the voyage. In that similar situation this Honorable Court affirmed that the vessel and its freight are to be valued as of the end of the voyage and that the cargo claimants have no interest in increased value arising from the repairing of the vessel, saying:

> "Their (the shipowner's) liability is fixed when voyage is ended. The subsequent history of the wreck can only furnish evidence of its value at that point of time. * * * This provision is absolute and the owner may have the benefit of it, not only by a surrender of the ship and freight, but by paying into court the amount of their value, *appraised as of the time when liability is fixed.* This, as we have seen, enables the owner to reclaim the ship and put it into complete repair, without increasing the amount of his liability. * * *" (Emphasis supplied.)

CONCLUSION.

It is respectfully requested that this Honorable Court deny the petition for writ of certiorari.

Dated, San Francisco, California,
October 28, 1949.

Respectfully submitted,
CLARENCE G. MORSE,
Proctor for Respondent.

FRANCIS L. TETREAULT,
Of Counsel.